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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, MAY 28, 2002

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2002-00012

Ex Parte: In re: proposed
payday lending regulations

ORDER TO TAKE NOTICE

WHEREAS, § 6.1-458 of the Payday Loan Act ("the Act"), §§ 6.1-444 et seq. of the Code of Virginia, authorizes the State Corporation Commission ("Commission") to adopt such regulations as it deems appropriate to effect the purposes of the Act; and

WHEREAS, the Bureau of Financial Institutions has proposed regulations that will define various terms used in the Act, clarify certain requirements and rules applicable to payday lending licensees and payday loans, and provide for the contents of a borrower rights and responsibilities pamphlet;

IT IS THEREFORE ORDERED THAT:

(1) The proposed payday lending regulations are appended hereto and made a part of the record herein.

Effective April 9, 2002, the new Case Management System requires that the case number format for all Commission orders change from, e.g., PUE010663 to the following: PUE-2001-00663.

(2) On or before June 20, 2002, any person desiring a hearing or to comment on the proposed regulations shall file a written request for hearing or written comments containing a reference to Case No. BFI-2002-00012, with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218.

(3) If a request for hearing is filed with the Clerk, a hearing will be held on June 26, 2002, at 10:00 a.m. in the Commission Courtroom, 1300 East Main Street, Second Floor, Richmond, Virginia.

(4) The proposed regulations shall be posted on the Commission's website at <http://www.state.va.us/scc/caseinfo/orders.htm>.

(5) An attested copy hereof, together with a copy of the proposed regulation, shall be sent to the Registrar of Regulations for publication in the Virginia Register.

AN ATTESTED COPY hereof shall be sent to the Commissioner of Financial Institutions.

CHAPTER 200.

PAYDAY LENDING.

10 VAC 5-200-10. Definitions.

A. The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

"Act" means the Payday Loan Act, §§ 6.1-444 et seq. of the Code of Virginia.

"Bureau" means the Bureau of Financial Institutions.

"Commission" means the State Corporation Commission.

"Duplicate original" for purposes of subdivision 2 of § 6.1-459 and this chapter means an exact copy with signatures created by the same impression as the original, or an exact copy bearing an original signature.

"Good funds instrument" for purposes of subdivision 1(vi) of § 6.1-459 and this chapter means a certified check, cashier's check, money order, or payment effected by use of a debit or credit card.

"Liquid assets" for purposes of the Act and this chapter means cash on hand and in depository institutions, money market funds, commercial paper, and treasury bills.

"Small" as used in the definition of "payday loan" in § 6.1-444, means \$2,500.00 or less.

B. Other terms used in this chapter shall have the meaning set forth in § 6.1-444 of the Act.

10 VAC 5-200-20. Requirements for licensees; operating rules.

A. A licensee shall maintain unencumbered liquid assets per place of business in Virginia of at least \$25,000 at all times.

The Bureau may require submission of proof of maintenance of such liquid assets at any time.

B. Any person submitting an application to acquire, directly or indirectly, 25% or more of the voting shares of a corporation or 25% or more of the ownership of any other person licensed to conduct business under the Act shall pay a non-refundable application fee of \$500.

C. Each original license shall be prominently posted in each place of business of the licensee. In order for a licensee to receive a replacement or reissued license, a licensee shall pay a fee of \$50 per place of business to the Commission. Licenses will only be replaced or reissued if the licensee is in compliance with all laws and regulations applicable to the conduct of the licensee's business.

D. If a person has filed a bond with the Bureau, as required by § 6.1-448 of the Code of Virginia, such bond shall be retained by the Bureau notwithstanding the occurrence of any of the following events:

1. The person's license is surrendered, suspended or
revoked; or

2. The person ceases engaging in business as a payday
lender.

E. Upon becoming licensed, a licensee shall give written
notice to the Bureau of its commencement of business within 10
days thereafter.

10 VAC 5-200-30. Notice and payday lending pamphlet.

A. Before entering into a payday loan transaction, a licensee
shall provide each prospective borrower with a pamphlet which
explains the borrower's rights and responsibilities. This
pamphlet shall use the exact language appearing in the "Payday
Lending Pamphlet" set forth in section 10 VAC 5-200-60. The
form shall be printed or typed without alteration separate from
all other papers or documents obtained by the licensee in type
of size not less than that known as 10 point. The title of the
pamphlet ("Payday Lending in the Commonwealth of Virginia,
Borrower Rights and Responsibilities") and the headings for the
individual sections of the pamphlet (e.g., "In General," "Notice
from Lender," "Limitations on Security Interest," etc.) shall be
in bold-face print or type.

B. Prior to disbursing loan funds to a borrower, a licensee
shall provide each borrower with a printed notice which states
the following: "WARNING: A payday loan is not intended to meet

long-term financial needs. It is recommended that you use a payday loan only to meet occasional or unusual short-term cash needs."

1. The notice and acknowledgement shall be printed or typed on 8½ x 11 paper without alteration, be separate from all other papers or documents obtained by the licensee, and be in type not less than that known as 24 point. The notice must also contain an acknowledgement stating the following: "I acknowledge that I have received a copy of this notice and the pamphlet entitled "Payday Lending in the Commonwealth of Virginia - Borrower Rights and Responsibilities."

2. The notice must be signed and dated by each borrower. A duplicate original of the acknowledged notice shall be kept in the separate loan file maintained with respect to the loan for the period specified in § 6.1-453 of the Code of Virginia.

10 VAC 5-200-40. Borrower prepayment.

A. In order to prepay a payday loan, a borrower shall only be required to pay the principal amount advanced as well as any accrued and unpaid fees.

B. For purposes of the Act and this chapter, interest and fees will be deemed "accrued" on a straight line basis over the term of a payday loan. Accordingly, a borrower choosing to prepay his payday loan shall only be responsible for the pro-rata portion of the total interest and fees based upon the number of

days which have elapsed between the loan disbursement date and the date of repayment. (For example, if a \$400 loan with fees of \$60 and a term of 10 days is prepaid after 5 days, the borrower shall only be required to pay in cash or good funds instrument \$430 (\$400 + \$30) to the licensee.)

10 VAC 5-200-50. Responding to requests from the Bureau of Financial Institutions.

A. When the Bureau requests a written response, books, records, documentation, or other information from a licensee in connection with the Bureau's investigation, enforcement, or examination of compliance with applicable laws, the licensee shall deliver a written response as well as any requested books, records, documentation, or information within the time period specified in the Bureau's request. If no time period is specified, a written response as well as any requested books, records, documentation, or information shall be delivered by the licensee to the Bureau not later than 30 days from the date of such request. In determining the specified time period for responding to the Bureau and when considering a request for an extension of time to respond, the Bureau shall take into consideration the volume and complexity of the requested written response, books, records, documentation, or information, and such other factors as the Bureau determines to be relevant under the circumstances.

B. Requests made by the Bureau pursuant to subsection A are deemed to be in furtherance of the Bureau's investigation and examination authority provided for in § 6.1-456 of the Code of Virginia. Failure to comply with subsection A may result in fines, license suspension, or license revocation.

10 VAC 5-200-60. Payday lending pamphlet text.

The required text of the payday lending pamphlet referred to in section 10 VAC 5-200-30 is as follows:

PAYDAY LENDING IN THE COMMONWEALTH OF VIRGINIA

BORROWER RIGHTS AND RESPONSIBILITIES

Please take the time to carefully review the information contained in this pamphlet. It is designed to advise you of your right and responsibilities in connection with obtaining a payday loan in Virginia under the Payday Loan Act, §§ 6.1-444 et seq. of the Code of Virginia. If you have any questions about payday lending or want additional information, you may contact the Virginia State Corporation Commission's Bureau of Financial Institutions toll-free at (800) 552-7945 or on the internet at <http://www.state.va.us/scc/division/banking>. The Bureau of Financial Institutions has available a "Consumer Guide to Payday Lending" which may be viewed at this website or obtained by calling the toll-free telephone number listed above.

In General: You are responsible for evaluating whether a payday loan is right for you. Alternatives may includes less expensive

short-term financing from another financial institution, family, or friends, a cash advance on a credit card, an account with overdraft protection, or a loan repayable over several months.

Notice from Lender: The lender is required to provide you with a clear and conspicuous printed notice advising you that a payday loan is not intended to meet long-term financial needs and that you should use a payday loan only to meet occasional or unusual short-term cash needs.

Limitations on Security Interest: The lender cannot require you to provide more than one check as security for any payday loan. The check cannot be post-dated. The lender cannot require you to provide any security for your payday loan other than a check payable to the lender.

\$500 Maximum/7 Day Minimum Term: The lender cannot lend you more than \$500. By law, the specified due date of your loan must be at least seven days after the date that money is advanced to you.

Fees, Charges, and Interest: The lender is permitted to charge you interest in the form of a fee not exceeding 15% of the amount of money advanced to you (i.e., \$15 per \$100 advanced). For example, if the lender advances you \$500 (the maximum amount allowed), the lender may charge you up to \$75 as a fee for obtaining the loan. No additional amounts may be directly or

indirectly charged, contracted for, collected, received, or recovered.

You will receive your loan proceeds in the form of either cash or a check from the lender. The lender cannot charge you a fee for cashing their check. Similarly, a check casher affiliated with the lender cannot charge you a fee for cashing the lender's check.

Written Agreement: The lender must provide you with a written loan agreement, which must be signed by both you and an authorized representative of the lender. The loan agreement is a binding, legal document which requires you to repay the loan. Make sure you read the entire loan agreement carefully before signing and dating it. The lender must provide you with a duplicate original of the loan agreement at the time of your loan transaction.

Cannot Purchase Other Products & Services: You are prohibited from using any of the money from your payday loan to purchase any other product or service sold at the lender's business location.

Right to Cancel: You have the right to cancel your loan at any time prior to the close of business on the next business day following the date your loan is made by paying the lender the amount advanced to you in cash, certified check, cashier's check, or money order, or by using a credit or debit card. For

example, if you obtain a loan on a Friday, you have until the close of business on the following Monday to cancel your loan (assuming that neither Friday nor Monday are federal holidays).

Partial Payments and Prepayments: You have the right to make partial payments (in increments of not less than \$5.00) on your payday loan at any time without charge. You have the right to receive signed, dated receipts for each payment made along with a statement of the balance remaining on your payday loan. You also have the right to prepay your loan in full before its specified due date without penalty by paying the lender in cash, certified check, cashier's check, or money order, or by use of a credit or debit card, the amount of money advanced to you as well as any accrued and unpaid fees.

No Rollovers, Extensions, Etc.: The lender cannot refinance, renew, extend, or rollover your payday loan.

Failure to Repay: Pay back your loan! Know when your payment is due and be sure to repay your loan on time and in full. You are responsible for having sufficient funds in your checking account on the due date of your loan so that your check does not bounce if the lender deposits it in his account. If you do not repay your loan by the specified due date, the lender may begin accruing interest at a maximum rate of 6% per year.

The lender is prohibited from threatening or beginning criminal proceedings against you if a check you provide to the lender bounces.

If you cannot or do not repay the loan: (i) the lender is permitted to recover from you any fee charged to the lender (maximum of \$25) as a result of your check being returned due to your account being closed by you or containing insufficient funds, or if you stopped payment on your check; and (ii) if the lender seeks and obtains judgment against you as a result of your returned check, the lender may obtain court costs and reasonable attorney's fees (total may not exceed \$250) if such costs and fees are awarded by the court.

Legal Action Against Lender: You have the right to sue the lender if you suffer a loss as a result of the lender violating any provision of the Payday Loan Act. If you are successful in your lawsuit, you have the right to be reimbursed for reasonable attorney's fees, expert witness fees, and court costs you have paid in connection with the lawsuit. Losses suffered as the result of the lender's violation of the Payday Loan Act may also be pursued under the Virginia Consumer Protection Act (§§ 59-196 et seq. of the Code of Virginia).

Complaints and Contacting the Bureau of Financial Institutions:

For assistance with any complaints you may have against a payday lender, please contact the Bureau of Financial Institutions

toll-free at (800) 552-7945 or on the internet at
[http://www.state.va.us/scc/division/banking.](http://www.state.va.us/scc/division/banking)